REMARKS

Status of the Claims

Claims 1-3, 5-22, 24-31, and 33-45 are pending in the above-identified application. Claims 20-22, 24-31, and 33-42 are currently withdrawn from consideration. As such, claims 1-3, 5-19, and 43-45 stand ready for further action on the merits. Support for the amendments to claims 1, 15-16, and 43 can be found in the currently pending claims. Specifically, the independent claims recite 64.50-99.50 wt % of fat and/or oil and 0.48-15.48 wt% of soy flour. As such, the ratio of fat and/or oil content to soy flour content is 4.167:1 to 207.292:1 is calculated based on 64.50/15.48 = 4.167 and 99.50/0.48 = 207.292. Thus, no new matter has been added.

Applicants submit that the present Amendment reduces the number of issues under consideration and places the case in condition for allowance. Alternatively, entry of the present amendment is proper to place the claims in better form for appeal.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues over the Cited References

1) Claims 1, 5-6, 9-11, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sessoms et al. '070 (US 3,851,070) in view of Melnick '830 (US 3,216,830) and Rudan et al. '754 (US 5,366,754) (paragraphs 3-15 of the outstanding Office Action).

2) Claims 2-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sessoms et al. '070, Melnick '830, and Rudan et al. '754 in view of Unnithan '261 (US 5,932,261) (paragraphs 16-21 of the outstanding Office Action).

3) Claims 12-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sessoms et al. '070, Melnick '830, and Rudan et al. '754 in view of McGee (paragraphs 22-24 of the outstanding Office Action).

4) Claims 7-8 and 17-19 are rejected under 35 U.S.C. § 103(a) as being obvious over Sessoms et al. '070, Melnick '830, and Rudan et al. '754 in view of Ashmead et al. '427 (US 4,725,427) (paragraphs 25-29 of the outstanding Office Action).

5) Claims 15-16 and 43-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sessoms et al. '070 in view of Melnick '830, Rudan et al. '754, and Unnithan '261 in view of McGee (paragraphs 30-36 of the outstanding Office Action).

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Prima Facie Obviousness

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

(a) determining the scope and content of the prior art;

(b) ascertaining the differences between the prior art and the claims in issue;

(c) resolving the level of ordinary skill in the pertinent art; and

(d) evaluating any evidence of secondary considerations.

Graham v. John Deere, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. *See* MPEP 2143.03.

Distinctions over the Cited References

All independent claims recite that "the ratio of fat and/or oil content to soy flour content is 4.167:1 to 207.292:1."

In contrast, Sessoms et al. '070 disclose that "it is preferred that the weight ratio of basestock component to soy protein be from 0.7:1 to about 2.5:1 (col. 4, lines 50-52). Furthermore, Sessoms et al. '070 disclose, "If amounts of oil in excess of the ratio expressed herein are employed, it may happen that the protein will gum and become dough-ball like" (col. 4, lines 55-58). As such, Sessoms et al. '070 actually teach away from the present invention. As stated in MPEP 2141.02(VI), a prior art reference must be considered in its entirety, i.e., as a

whole, including portions that would lead away from the claimed invention. Thus, Sessoms et al. '070 do not disclose the present invention.

In response, the Examiner states, "The ratio of the fat/oil to soy flour content is not being claimed, in particular Applicant argues specific weight of fat and/or oil content to soy flour content of 4.167:1 (64.50/15.48 = 4.167) whereas the claims is broad ranges of weight percentages" (paragraph 39 of the outstanding Office Action). As amended, the ratio of the fat/oil to soy flour content is now being claimed in the independent claims.

Regarding the "teaching away" argument, the Examiner asserts that "it is noted that the range taught is 'preferred' and not required by the reference and the range is in terms of 'about'" (paragraph 40 of the outstanding Office Action). Although the range is preferred, the Examiner does not address that Sessoms et al. '070 also disclose that if "amounts of oil in excess of the ratio expressed herein are employed, it may happen that the protein will gum and become dough-ball like" (col. 4, lines 55-58). Thus, Sessoms et al. '070 do teach away from the present invention.

To establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be disclosed by the cited references. As discussed above, Sessoms et al. '070 with the other cited references fail to disclose all of the claim limitations of independent claims 1, 15-16, and 43, and those claims dependent thereon. Accordingly, the combinations of references do not render the present invention obvious.

Furthermore, the cited references or the knowledge in the art provide no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Therefore, a *prima facie* case of obviousness has not been established, and withdrawal of the outstanding rejections is respectfully requested. Any contentions of the USPTO to the contrary must be reconsidered at present.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

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Respectfully submitted,

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